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October 6 1998

VIA HAND DELIVERY

Magalie Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, DC 20554


Re: MM Dkt. 98-135, RM-9300
Lufkin and Corrigan, TX
Reply Comments

Dear Ms. Salas:

Transmitted herewith, on behalf of Corrigan Broadcasting Company, are an original and four copies of its Reply Comments filed in the above-referenced rulemaking proceeding to amend the FM table of allotments.

If questions arise, please contact the undersigned attorney.

Sincerely,


Ann Bavender
Counsel for
Corrigan Broadcasting Company

Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Amendment of Section 73.202(b)) MM Dkt. No.98-135
of the Commission's Rules,) RM-9300
FM Table of Allotments)
(Lufkin and Corrigan, Texas))

To: Chief, Allocations Branch

REPLY COMMENTS

Corrigan Broadcasting Company ("CBC") by its attorney, hereby submits its reply to the Comments of Russell L. Lindley ("Lindley") and Comments And Counterproposal of Houston Christian Broadcasters, Inc. ("Houston") in the above-captioned allotment proceeding in which it is proposed that the Commission amend Section 73.202(b) of its Rules, FM Table of Allotments, to allot FM Channel 261A to Lufkin, Texas as its ninth local service. As shown below, CBC's counterproposal requesting allotment of Ch. 261A to Corrigan as its first local service prevails over the proposals of Lindley and Houston pursuant to the Commission's FM allotment priorities.¹

¹The FM allotment priorities are : (1) first full-time aural service; (2) second full-time aural service; (3) first local service; (4) other public interest matters. Priorities (2) and (3) are given equal weight. Revision of FM Assignment Procedures, 90 FCC 2d 88, 51 RR 2d 807 (1982)

1. Lindley and Houston each request that Ch. 261A be allotted to Lufkin, Texas as its ninth local service. Lufkin currently is served by five licensed radio stations^{2 3} and the Commission has granted a construction permit for a sixth radio station at Lufkin.⁴ In addition, Lindley has requested a seventh frequency, Ch. 230A, at Lufkin in a prior allotment rulemaking.⁵ Houston further has an application pending for a new noncommercial FM station on Ch. 201C3 at Lufkin, Texas (File No. BPED-960830MF), which, if granted, would provide Lufkin with its eighth local service.⁶ Accordingly, allotment of Ch. 261A to Lufkin would provide Lufkin with its ninth local service. Lindley's and Houston's proposals cannot prevail since, pursuant to the Commission's allotment priorities, provision of a ninth local service warrants merely priority number 4 (other public interest matters)

2. In contrast CBC's counterproposal requesting allotment of Ch. 261A to

²Stations KRBA(AM), KLDN(FM), KSWP(FM), KUEZ(FM), and KYKS(FM) are licensed to Lufkin, Texas.

³In proposing Ch. 261A as Lufkin's "fourth" local service, Lindley erroneously fails to take into account noncommercial educational Stations KLDN(FM) and KSWP(FM) licensed to Lufkin. See Sanford and Robbins, North Carolina, 12 FCC Rcd 1, 6 CR 71, 72 n.2 (Alloc. Br. 1997); Valley Broadcasters, Inc., 5 FCC Rcd 2785, 2788, 67 RR 2d 937, 941 (1990); Change of Community of License, 5 FCC Rcd 7094, 7097 68 RR 2d 644, 650 (1990).

⁴Lindley also fails to take into account the construction permit for noncommercial educational Station KAVX(FM), Lufkin, Texas. Id.; see Change of Community of License at n.16.

⁵Notice of Proposed Rule Making in MM Dkt. No. 98-125, released July 17, 1998.

⁶FM translator K201CV is currently licensed to Lufkin, Texas on Ch. 201.

Corrigan, Texas as its first local service prevails since it triggers allotment priority number 3 (first local service). As demonstrated in CBC's counterproposal, the City of Corrigan, Texas was incorporated in 1938 and has a population of 1,764. It is governed by a mayor and five city council members, and served by a city clerk, city secretary, city manager, chief of police, municipal judge, municipal court clerk, and city librarian. City services include police, volunteer fire department, and water and sanitation services, and Corrigan is served by two medical clinics which also provide emergency transportation services. The city has its own school district, with elementary, middle, and high schools, numerous charitable organizations, a city library, various recreational activities, and five churches. Allotment of Channel 261A will provide Corrigan with its first local transmission service and an essential outlet for local expression. Accordingly, the allotment will best serve the public interest.

3. Houston's request to allot Ch. 261A to Lufkin, reserve it for noncommercial use, and allow Houston to amend its pending application for a new noncommercial educational FM station on Ch. 201A at Lufkin, Texas to specify Ch. 261A must fail for three reasons. First, Houston's proposal, like Lindley's proposal, is for a ninth local service at Lufkin and cannot, under the Commission's FM allotment priorities, prevail over CBC's proposal for a first local service at Corrigan. See Ojai and Santa Barbara, California, 53 RR 2d 1354, 1355 (Policy & Rules Div. 1983) (commercial FM allotment priorities and procedures apply to noncommercial allotments); see also Valley Broadcasters, Inc., *supra*. In addition, the cases cited by

Houston are not applicable where competing proposals such as CBC's and competing expressions of interest such as Lindley's have been received. Further, even if, for sake of argument, proposed noncommercial allotments were treated differently than commercial allotments, which they are not (id.), three of the six radio stations currently authorized at Lufkin (fifty percent) are noncommercial stations, precluding any need for further noncommercial service there.

In conclusion, CBC's proposal requesting allotment of Ch. 261A to Corrigan will provide Corrigan with its first local service, allotment priority number 3 under the Commission's FM allotment priorities, and, accordingly, Houston's proposals to allot Ch. 261A to Lufkin as its ninth local service allotment prior number 4 (other public interest matters).

WHEREFORE, for the foregoing reasons, the Commission should amend Section 73.202(b) of its rules to allot FM Channel 261A to Corrigan, Texas.

Respectfully submitted,

**CORRIGAN BROADCASTING
COMPANY**

By



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October 6, 1998

CERTIFICATE OF SERVICE

I, Judy Ryan, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that true copies of the aforementioned Reply Comments were served this 6th day of October, 1998, via United States First Class Mail, postage prepaid, upon:

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